IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 4366 of 2004(T)

ORDER ON I.A.6054/03 IN O.S.399/03 OF ADDL.MUNSIFF-II, NEYYATTINKARA.

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PETITIONER:

MOHANAN, S/O.KRISHNAN, AGED 40,
RESIDING AT S.K.BHAVAN, KUNDUVILA,
KOTTAMOM, PARASUVAIKKAL VILLAGE.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS:

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1. SUDHAKARAN, S/O.BALAKRISHNA PANICKER,
CHEMBUMKUZHI PUTHEN VEEDU,
PARASUVAIKAL DESOM,PARASUVAIKAL VILLAGE.

2. VILASINI, D/O.KAMALAKSHI OF DO. DO.

3. NIRMALA, W/O.THANKAMMA,
X'IAN AGED ABOUT 38 YEARS,
PONNAMKULAM WARD, MEMBER PARASSALA, RESIDING
AT S.N.NIVAS, CHERUVATTOOR POTTA, PARASSALA
VILLAGE.

4. JNANASELVAM, S/O.ISALKIAL,
X'IAN, RESIDING AT PALLIVILA PUTHEN VEEDU,
PARASUVAIKAL DESOM PARASUVAIKAL VILLAGE,
NEYYATTINKARA.

5. THULASIDHARAN, S/O.PADMANABHAN,
AGED ABOUT 32 YEARS, RESIDING AT PLAVILA,
PATTUKAKARAKKADU VEEDU, PARASUVAIKAL DESOM,
PARASUVAIKAL VILLAGE, NEYYATTINKARA.

R2 BY ADV. SRI.BLAZE K.JOSE
R3 TO R5 BY ADV.SRI.NAGRAJ NARAYANAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.4366/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAINT DT.5.6.03 IN O.S.399/03

EXT.P2 – TRUE COPY OF WRITTEN STATEMENT DT.30.8.03.

EXT.P3(A) – TRUE COPY OF REPORT

EXT.P3(B) – TRUE COPY OF PLAN

EXT.P4(A) – TRUE COPY OF REPORT.

EXT.P4(B) – TRUE COPY OF PLAN DT.16.8.03.

EXT.P5 – TRUE COPY OF I.A.6054/03 DT.14.10.03.

EXT.P6 – TRUE COPY OF ORDER IN EXT.P5 I.A. IN OS.399/03 DT.27.11.03 OF ADDL.MUNSIFF-II, NEYYATTINKARA.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.4366 OF 2004

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DATED THIS THE 24th JULY, 2007

J U D G M E N T

The Writ Petition is remaining defective on the reason that the 1st respondent is not served with notice. But then, it is seen that the 1st respondent is none other than the husband of the 2nd respondent who has entered appearance before this Court. In fact, respondents 1 and 2 were sailing together before the court below. The Writ Petition is therefore no longer defective.

2. Heard both sides.

3. The impugned order is Ext.P6 by which an application for issuance of a commission filed by the defendants for reporting on certain features relating to the pathway in dispute was dismissed by the learned Munsiff. The learned Munsiff has observed that the matters sought to be reported are not necessary for adjudicating the real controversy between the parties. I am of the view that it was too early for the learned Munsiff to have observed so. It appears to me, on hearing the submissions addressed at the Bar, that the report to be obtained on the basis of the present commission application can probably of some assistance to the court in resolving some of the issues which are likely to crop up for decision in the suit. It will be of

assistance to the court in the matter of the prosecution petition filed by the plaintiffs-respondents 1 and 2 under Order XXXIX Rule 2A C.P.C. At any rate, the non-filing of application for commission by the plaintiffs for identifying the pathway on the basis of the title deeds should not have been seen as a reason for dismissing the application.

4. I set aside Ext.P6 and allow I.A.No.6054 of 2003. The learned Munsiff will appoint an able advocate of his court as commissioner, preferably the advocate who was appointed earlier in the suit. The costs in the matter of the commission work which is being allowed by this judgment will be borne by the defendants themselves and such costs shall not form part of the ultimate costs of the suit.

The Writ Petition is allowed as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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